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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,442	02/12/2004	Eric C. Humphries	102491-100	4785

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WIGGIN AND DANA LLP  
ATTENTION: PATENT DOCKETING  
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EXAMINER

LUKS, JEREMY AUSTIN

ART UNIT PAPER NUMBER

2837

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/777,442	<b>Applicant(s)</b> HUMPHRIES ET AL.	
	<b>Examiner</b> Jeremy Luks	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/31/05</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 14-15 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Donnelly (2003/0019170). Donnelly teaches a first vertically-mounted post (Figure 12, #70, on left side of figure) including a first slot (72) disposed therein, the first slot (72) extending lengthwise along a side of the first post (70); a second vertically-mounted post (70, on right side of figure) spaced apart from the first post (70), the second post (70) including a second slot (72) disposed therein, the second slot (72) extending lengthwise along a side of the second post (70); and a first panel assembly (20) extending between the first and second posts (70), the first panel assembly (20) including a sheet of material having top, bottom, and side edges forming a perimeter of the sheet (Figure 11, Examiner is referring to inner ribs , #22 and the cavities surrounding them, which make up the sheet), and a frame (Examiner is referring to the solid outer perimeter of the panel #20 in Figure 12) disposed along the entire perimeter of the sheet, wherein side portions of the frame capture the entire perimeter of the top, bottom and side edges of the sheet, the side portions of the frame being received within the first and second slots (70) in drop-down fashion (Figure 13).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-4, 6-7, 9-12, 16-18, 20-21 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donnelly (2003/0019170) in view of Schondelmayer (6,314,687).

With respect to Claims 2, 6-7, 9-11, 16, 20-21 and 23-25, Donnelly is relied upon for the reasons and disclosures set forth above. Donnelly fails to teach a base portion disposed outside one of the side edges of the sheet; first and second flange portions disposed on the base portion, the first and second flanges forming at least a portion of a channel for capturing the side edge of the sheet, wherein at least the base portion is received in one of the first and second slots; and the base portion and the first and second flanges are coupled to one another and are disposed outside the entire perimeter of the sheet, and the channel formed by the base portion and the first and second flanges capture a portion of each of the top, bottom, and side edges of the sheet; and the base portion and the first and second flanges are formed from a single piece of material, or the first and second flanges are formed from tubing coupled to a plate forming the base portion. Schondelmayer teaches a base portion (Figure 1, #20) disposed outside one of the side edges of a sheet (150); first and second flange

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portions (Figure 43, #298) disposed on the base portion (Figure 1, #20), the first and second flanges (Figure 43, #298) forming at least a portion of a channel (Figure 2, #88, 108) for capturing the side edge of the sheet (150), wherein at least the base portion (20) is received in one of the first and second slots when used in combination with Donnelly; and the base portion (20) and the first and second flanges (298) are coupled to one another and are disposed outside the entire perimeter of the sheet (150), and the channel (88, 108) formed by the base portion (20) and the first and second flanges (298) capture a portion of each of the top, bottom, and side edges of the sheet (150); and the first and second flanges (298) are formed from tubing coupled to a plate forming the base portion (20) (See tube configuration of flange 298, Figure 19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnelly, with the apparatus of Schondelmayer to allow for thinner panels assemblies to be put into existing posts via a frame portion. Schondelmayer fails to teach the base portion and the first and second flanges are formed from a single piece of material. However, The method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation has been given little patentable weight.

With respect to Claims 3 and 17, Donnelly teaches wherein the sheet (Figure 11, Examiner is referring to inner ribs, #22 and the cavities surrounding them, which make up the sheet), has a thickness substantially less than a width of each of the first and second slots (72) (See Figure 11).

With respect to Claims 4 and 18, Donnelly is relied upon for the reasons and disclosures set forth above. Donnelly fails to teach wherein the sheet has a thickness less than a thickness of the first flange and less second a thickness of the second flange. Schondelmayer teaches wherein the sheet (Figures 1 and 2, #150) has a thickness less than a thickness of the first flange (298) and less second a thickness of the second flange (298). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnelly, with the apparatus of Schondelmayer to fit a thinner panel within slot of an existing post via a frame assembly.

With respect to Claims 12 and 26, Donnelly teaches a second panel assembly (Figure 12, #20) extending between the first and second posts (70), and the frame of the first panel assembly (20) includes at least one of a protrusion (40) and a recess (30) disposed on a base portion for interlocking with the second panel assembly (20) (Page 2, [0043]).

3. Claims 13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donnelly (2003/0019170) in view of Pickett (4,214,411). Donnelly is relied upon for the reasons and disclosures set forth above. Donnelly fails to teach wherein the sheet is formed from a transparent material. Pickett teaches a sheet (Figure 1, #2) formed from a transparent material (Col. 2, Lines 59-66). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnelly, with the apparatus of Pickett to provide travelers with a view outside of the roadway.

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4. Claims 5, 8, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donnelly (2003/0019170) in view of Schondelmayer (6,314,687) as applied to Claims 2, 3, 16 and 17 above, in view of Pickett (4,214,411). Donnelly and Schondelmayer are relied upon for the reasons and disclosures set forth above. Donnelly and Schondelmayer fail to teach an elastomeric gasket disposed between the outer surfaces of the side portions of the frame and surfaces forming the channel, and covering at least a portion of the side edge of the sheet captured within the channel. Pickett teaches an elastomeric gasket (Figure 3, #8) disposed between the outer surfaces of the side portions of a frame (9) and surfaces (10) forming a channel (see channel formed by bracket #9), and covering at least a portion of the side edge (3) of a sheet (2) captured within a channel (see channel formed by bracket #9) (Col. 3, Lines 1-5 and Col. 5, Lines 31-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnelly as modified, with the apparatus of Pickett to provide a secure structure capable of withstanding extreme force and weather conditions, within an acoustically tight manner.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pertinent arts of record relating to Panel assembly for traffic noise barrier wall are disclosed in the PTO-892.

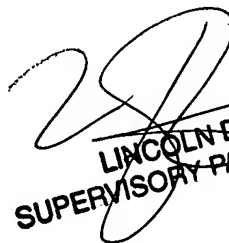
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-

2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks  
Patent Examiner  
Art Unit 2837



LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER